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No. 87-873

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNION DE TRANSPORTS AERIENS,

Petitioner,

—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITIONER'S REPLY MEMORANDUM

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Respondent Robert M. Beckman argues that his state of mind at the time of his Rule 11 certification of the complaint is in dispute, and therefore the abuse of discretion standard used by the Court of Appeals for the District of Columbia is appropriate for reviewing the district court's decision on whether to impose sanctions. This argument reflects a fundamental misconception as to the purpose and operation of Rule 11. Mr. Beckman's state of mind is not relevant in the context of Rule 11.[1] Rule 11 does not require willful violation. The Rule places an affirmative duty on attorneys to assure that

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1 Although not relevant to the initial decision to impose sanctions (because that is a question of law), equitable factors may be an ingredient in the discretionary aspect of Rule 11—determining the sanction. *Brown v. Federation of State Medical Boards of the United States*, 830 F.2d 1429, 1439 (7th Cir. 1987).

pleadings are reasonable in light of the facts and the law. *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (2d Cir. 1985). "Simply put, subjective good faith no longer provides the safe harbor it once did." *Id.*; *see also Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir. 1986). If the court finds that a pleading is not well grounded in fact or law and that no reasonable inquiry was made before filing, the court is required to impose a sanction without regard to whether the failure was willful or inadvertent. *Weisman v. Rivlin*, 598 F. Supp. 724, 726 (D.D.C. 1984); *see also Duncan v. WJLA-TV, Inc.*, 106 F.R.D. 4, 6 (D.D.C. 1984).[2]

The real questions posed by the decision of the Court of Appeals for the District of Columbia, therefore, are as presented in UTA's petition. The issues in this case afford the Court an opportunity to resolve the serious conflict among the circuit courts of appeals concerning the appropriate standard for reviewing the legal conclusions of the district courts as to whether specific conduct violates Rule 11. The *de novo* review standard adopted by several of the circuit courts of appeals for review of lower court determinations to impose sanctions tends to promote uniformity, while the abuse of discretion standard used by other circuit courts inevitably results in inconsistent application of Rule 11. Contrary to Mr. Beckman's assertion that there is no conflict (Opposition at 6), the conflict among the circuit courts of appeals over the appropriate standard of review in Rule 11 cases was recently noted by the American Bar Association Section of Litigation in the second edition of its

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2 The reference to willfulness in the former text of Rule 11 was, in fact, deleted from amended Rule 11. *See* Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment.

publication on sanctions. ABA Section of Litigation, *Sanctions, Rule 11 and Other Powers*, at 14-15 (2d ed. 1988).[3]

The opposing brief filed by Mr. Beckman fails to cite a single case to support his contention that UTA's motion for sanctions "hinges upon the respondent's alleged state of mind" (Opposition at 8). This is not surprising since there is no real dispute among the circuit courts of appeals that Rule 11 no longer requires a finding of bad faith. *See, e.g., Eastway Construction Corp. v. City of New York*, 762 F.2d at 253-254; *Zaldivar v. City of Los Angeles*, 780 F.2d at 829; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1177 (D.C. Cir. 1985). Placing an attorney's state of mind in issue would serve only to insulate from culpability the very conduct which Rule 11 was intended to deter and would frustrate the Rule's objective seeking to assure adequate pre-filing investigation and well-founded allegations.

Although UTA did assert in the Statement of the Case in its petition that Mr. Beckman's refusal to correct the complaint when the false allegations were brought to his attention could "hardly be deemed inadvertent" (Petition at 4), petitioner never suggested that its motion for sanctions was in any way dependent upon a finding of willfulness. Mr. Beckman's assertion that UTA has misled the Court concerning his use of these false allegations is also baseless. Mr. Beckman does not dispute the fact that he had personal knowledge that UTA did not compete with Laker Airways and had not participated in any alleged price-fixing conspiracy at the time he certified the complaint in this matter *and* at the time he responded to UTA's

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3 Though not directly relevant to the issues raised in this petition, respondent's brief highlights yet another conflict among the circuit courts. While the Circuit Court for the District of Columbia has held and maintains that the district court's fact-finding inquiry is subject to review for abuse of discretion (Opposition at 7), the Ninth Circuit has ruled that factual determinations are to be reviewed under a clearly erroneous standard (Opposition at 8).

supplemental filing.[4] Yet, in spite of this knowledge, Mr. Beckman failed to correct the misrepresentations contained in the complaint when they were brought to his attention. As the Court of Appeals for the District of Columbia noted:

> When UTA called the error to plaintiffs' counsel's attention, he did not acknowledge the inaccuracy but instead seized the offensive.

Adams v. Pan American World Airways, Inc., 828 F.2d 24, 32 (D.C. Cir. 1987).

Mr. Beckman also argues that "Rule 11 is directed by its plain language to the overall factual and legal basis for the pleading" (Opposition at 9). In support of his position that Rule 11 is "not aimed at rooting out and sanctioning every error in an otherwise meritorious pleading" (Opposition at 9), respondent cites the Ninth Circuit's opinion in *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531 (9th Cir. 1986). It is significant to note that *Golden Eagle* dealt with legal argument—an area in which courts are extremely reluctant to chill an attorney's enthusiasm or creativity in pursuing legal theories—and not with misrepresentations of fact. It is also telling that the five judges who dissented from the denial of *en banc* consideration in *Golden Eagle* stated that they would not limit the district court's consideration to "the frivolity of the paper," but would impose sanctions for misrepresentations made to the court. 809 F.2d 584, 585-586 (9th Cir. 1987). Moreover, in its latest pronouncement on the subject, the Ninth Circuit described the *Golden Eagle* holding as limited to "the manner in which counsel had framed his supporting

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4 While it is not relevant to the false allegations against UTA at issue in this appeal, Mr. Beckman has once again attempted to create the false impression that Laker Airways was a potential competitor of UTA because Laker had applied for a license to provide service between the U.K. and Australia, and was planning to provide air transportation within Europe.

UTA provided service between France and Australia, not between the U.K. and Australia. Nor was UTA an airline with an inter-European route system. UTA provided service from different cities in France to points in Africa, Indonesia and Australia.

arguments" and rejected the broader interpretation urged upon it that *Golden Eagle* condones frivolous arguments in non-frivolous papers. *Hudson v. Moore Business Forms, Inc.*, 827 F.2d 450, 456 (9th Cir. 1987). Even more recently, the Seventh Circuit has held that "Rule 11 applies to all statements in papers it covers." *Frantz v. United States Power Lifting Federation*, 1987-2 Trade Cas. (CCH) ¶ 67,832, at 59,511 (7th Cir. 1987).

The assertion of a single allegedly sufficient (and adequately investigated) claim should not permit counsel to file other unsubstantiated claims as riders. Each claim takes up valuable judicial time to hear and resolve and imposes substantial burdens in terms of time and effort on those who must respond to each claim. A single claim in an antitrust case may occasion the expenditure of hundreds or even thousands of hours, as the opposing party and its counsel attempt to sort out and respond to the allegations and the legal theories underlying them. *Id.* Rule 11 stands as an important deterrent to the assertion of unsubstantiated claims with their attendant burdens and costs, and it is essential that the salutary purposes underlying the Rule not be thwarted.

Respectfully submitted,

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